

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DENNIS ZAMPITELLA)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:16-cv-781
)	
WALGREENS CO., KATHY KALOWSKI,)	
BRIAN SHUT, DAN JANSON, FIRST)	Jury Trial Demanded
ADVANTAGE CORPORATION, DANA)	
CLARK, TALX UCM SERVICES CO.,)	
and TALX UC EXPRESS)	
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, Defendants Walgreen Co. (“Walgreens”),¹ TALX UCM Services, Inc. d/b/a TALX UC eXpress² (“TALX”), Kathy Kalinowski, Richard Brian Shutt, and Dan Jansen,³ (collectively “Defendants”) hereby give notice of the removal of the above-styled action to this Court from the Circuit Court of St. Louis County, State of Missouri. In support thereof, Defendants state the following:

1. Plaintiff Dennis Zampitella (“Plaintiff”) commenced the above-captioned action in the Circuit Court of St. Louis County, State of Missouri, on or about April 27, 2016, by filing his Petition in the cause styled *Zampitella v. Walgreens Co., et al.*, Case No. 16SL-CC01542, against Defendants (the “State Court Action”).

¹ In Plaintiff’s Petition, Defendant Walgreen Co. is incorrectly identified as “Walgreens Co.”

² In Plaintiff’s Petition, Defendant TALX UCM Services, Inc. is incorrectly called “TALX UCM Services Company.” TALX UCM Services, Inc. does business as TALX UC eXpress.

³ In Plaintiff’s Petition, Defendant Jansen’s last name is misspelled as “Janson,” Defendant Kalinowski’s last name is misspelled as “Kalowski,” and Defendant Shutt’s last name is misspelled as “Shut.”

2. On May 5, 2016, Plaintiff served Defendant TALX. On May 13, 2016, Plaintiff served Defendants Kalinowski, Shutt, and Jansen, respectively. Plaintiff has not yet served Defendant Walgreens.⁴

3. Defendant First Advantage Corporation (“First Advantage”) has been served in this matter and consents to removal.⁵ See First Advantage Corporation’s Consent to Removal, attached as Exhibit A.

4. To date, Defendant Dana Clark has still not been served with a summons or copy of the Petition. Therefore, her consent is not needed for this removal. See *Roberts v. Palmer*, 354 F. Supp. 2d 1041, 1044 (E.D. Mo. 2005) (“It is well recognized that the consent of unserved defendants need not be obtained to effectuate removal”).

5. Pursuant to 28 U.S.C. § 1446, Defendants’ removal of this action is timely based upon the dates of service of Plaintiff’s summons and Petition.

6. Defendants have attached a copy of the Circuit Court file in this case as Exhibit B to this Notice of Removal.

7. A copy of the original filing form and civil cover sheet are attached hereto.

8. Pursuant to 28 U.S.C. § 1446(d), Defendants have filed a copy of this Notice of Removal with the Circuit Court of St. Louis County, Missouri. Defendants have also given Plaintiff written notice of this Notice of Removal as is required by 28 U.S.C. §1446(d).

⁴ Plaintiff originally filed a Notice of Service, stating Walgreens was served on May 16, 2016, but then filed correspondence with the state court on May 27, 2016, indicating that the service was incorrect.

⁵ Defendants are entitled to remove without consent of Defendants First Advantage, Clark, TALX UCM Service, Inc., or TALX UC eXpress because they are fraudulently joined and/or merely nominal defendants. See *Thorn v. Amalgamated Transit Union*, 305 F.3d 826, 833 (8th Cir. 2002) (affirming denial of motion to remand where parent union did not timely join in removal petition, finding that it was a nominal party whose consent was not required); *Pecherski v. Gen. Motors Corp.*, 636 F.2d 1156, 1161 (8th Cir. 1981) (finding a court may permit removal “if the plaintiff’s joinder of Doe defendants was fraudulent or such defendants are merely nominal parties against whom no real relief is sought.”).

9. The action arises from Plaintiff's employment and Plaintiff alleges Walgreens was Plaintiff's employer. *See* Pl.'s Petition, at ¶ 5.

10. This action is removable pursuant to 28 U.S.C. §1441 which permits any civil action brought in any state court in which the district courts of the United States have original jurisdiction to be removed to the district court of the United States for the district and division embracing the place where the state court action is pending.

11. The Court has original jurisdiction over the state court action under 28 U.S.C. § 1331 because one of Plaintiff's causes of action arises under the laws of the United States, namely, the Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.* *See* Pl.'s Petition at Count II, ¶ 45.

12. The Court may exercise supplemental jurisdiction over Plaintiff's Missouri Human Rights Act claim (Count I) pursuant to 28 U.S.C. § 1367, because that claim is so related to the FMLA claim that they form part of the same case or controversy under Article III of the United States Constitution.

WHEREFORE, Defendants Walgreen Co., TALX UCM Services, Inc. d/b/a TALX UC eXpress, Kathy Kalinowski, Richard Brian Shutt, and Dan Jansen, by and through their counsel, desiring to remove this civil action to the United States District Court for the Eastern District of Missouri, Eastern Division, prays that the filing of this Petition for and Notice of Removal, the giving of written notice thereof to Plaintiff, and the filing of a copy of this Petition for the Notice of Removal with the clerk of the Circuit Court of St. Louis County, State of Missouri, shall effect the removal of said civil action to this Honorable Court.

Dated: June 2, 2016

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART**

/s/ Rodney A. Harrison

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TALX UCM SERVICES, INC. D/B/A TALX UC
EXPRESS**

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the Court's CM/ECF System, will be sent electronically to registered participants and paper copies will be sent to those indicated as non-registered participants on June 2, 2016:

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/s/ Rodney A. Harrison
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